

EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
(Harrisburg Division)

UNITED STATES FIDELITY AND)
GUARANTY COMPANY,)
Plaintiff,)
-vs-)
BRUCE J. BROWN AND BROWN)
SCHULTZ SHERIDAN & FRITZ,)
Defendants.)
Civil Action No.
1:01-CV-00813

1 of Ms. Phillips as an accountant during the period of
2 time she worked with or for CCI Construction?

3 A I did not form any specific opinions, no.

4 Q Wouldn't it be important to you in reviewing the
5 audit information to know or form an opinion about the
6 competence of the internal chief financial officer?

7 A She was one of several key members of
8 management. Through a deposition and not knowing this
9 individual, it's difficult to opine on the quality of
10 the work she did or did not do.

11 Q Did you learn any information from your review
12 which led you to believe Ms. Phillips was other than
13 competent --

14 A No.

15 Q -- as an accountant?

16 A No.

17 Q Do you have any reason to doubt Ms. Phillips had
18 an understanding about construction industry accounting?

19 A No.

20 Q Did you form any opinions about the capability
21 of CCI management?

22 A I didn't form any specific opinions, no.

23 Q Did you learn any information which caused you
24 concern about the capability of CCI management?

1 in accordance with AICPA peer review guidelines?

2 A Yes.

3 Q Do you have any reason to doubt that the peer
4 reviewers in Pennsylvania are required to receive AICPA
5 training?

6 A As I indicated, I don't know who served on the
7 team of peer reviewers.

8 Q Do you have any reason to think that the peer
9 reviewers for the -- who performed the peer review of
10 the Brown, Schultz audit report for the 1997 financial
11 statement of CCI Construction were other than
12 qualified --

13 A No.

14 Q -- and competent?

15 A No.

16 Q Did you -- sorry. Did you perform -- let me
17 start over.

18 Did you select the materials you wanted to
19 review in connection with your engagement for this
20 matter?

21 A Yes.

22 Q And what process did you use to select
23 materials?

24 A I used the materials that were available and

1 concept, which I just read to you, in mind?

2 A Yes.

3 MR. MCGLYNN: Objection.

4 MR. MCCARRON: Q And did you apply that concept in
5 connection with the work you performed for the
6 engagement in this case?

7 A Could you ask that again?

8 Q Did you apply the concept, which I just asked
9 you -- read to you and asked you about, to your
10 engagement for this case?

11 A Yes.

12 Q Do you agree with this statement --

13 MR. MCGLYNN: Slowly now.

14 MR. MCCARRON: Q -- that the statement of position
15 on percentage of completion method states a presumption
16 that contractors generally have the ability to produce
17 estimates that are sufficiently dependable to justify
18 the use of the percentage of completion method of
19 accounting. It also states that percentage of
20 completion -- let me start over.

21 It also states that persuasive evidence to the
22 contrary is necessary to overcome that perception --

23 A May I read that?

24 Q -- presumption.

1 Do you want me to read it again?

2 A Or you could read it again.

3 Q Do you agree with the statement that the
4 statement of position concerning percentage of
5 completion method of accounting states a presumption
6 that contractors generally have the ability to produce
7 estimates that are sufficiently dependable to justify
8 the use of the percentage of completion method of
9 accounting. It also states that persuasive evidence to
10 the contrary is necessary to overcome that presumption.

11 A Could you read it back to me?

12 (Record read.)

13 THE WITNESS: Yes.

14 Q Did you apply that concept in connection with
15 the work you performed for this engagement in this
16 action?

17 A Yes, I did.

18 Q Do you agree, sir, that the previous reliability
19 of a contractor's estimating process is usually an
20 indication of continuing reliability, particularly if
21 the present circumstances are similar to those that
22 prevailed in the past?

23 A Yes, that would be one method.

24 Q So yes, you would agree with that statement?

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1 A That -- You're reading a portion of it. Yes, I
2 agree with that statement.

3 Q Did you apply that concept to the engagement you
4 performed in connection with this case?

5 A Yes, I did.

6 Q Did you review the audit work by Brown, Schultz
7 for any years earlier than 1996?

8 A I had the 1994 and 1995 work papers and
9 financial statements.

10 Q But you did not review those materials?

11 A I reviewed the materials. I was not opining on
12 those years and did not include them in my information,
13 but I used them to form a basis for what I was going
14 forward with was 1996, '97, and '98.

15 Q Did you reflect or indicate in any of the
16 reports or the affidavit, which you signed, that you had
17 reviewed work performed by Brown, Schultz for the audit
18 for the years 1994 and 1995?

19 A I don't have the other reports in front of me.

20 0 Here is one.

21 A This is the first one?

22 (Discussion had off the record.)

23 THE WITNESS: Could you please restate the question?
24 I've looked through the documents.

1 before.

2 Q Did you have an understanding -- let me start
3 over.

4 Were you aware there was a long-standing
5 relationship for audits between CCI Construction and
6 Brown, Schultz prior to 1997?

7 MR. MCGLYNN: Jeff, can you just increase the volume
8 a little bit? I'm having trouble hearing. I got the
9 background noise out of the window here.

10 MR. McCARRON: Q Did you -- were you -- let me
11 start over.

12 Are you aware that Brown, Schultz had performed
13 audit services for CCI Construction for many years prior
14 to 1997?

15 A Yes.

16 Q Did you know how long that relationship existed
17 prior to 1997 or do you know how long that relationship
18 existed prior to 1997?

19 A If I recall from the information reviewed in the
20 depositions, I believe the relationship started in 1992.

21 Q Did it matter to you in forming your opinion
22 about the work performed by Brown, Schultz that Brown,
23 Schultz had many years of experience with auditing CCI
24 Construction?

1 A I took it into consideration, yes.

2 Q Does it matter to you -- let me start over.

3 Does it matter -- Can an auditor properly take
4 into account the experience the auditor has with a
5 particular client in performing an audit?

6 A Yes.

7 Q Was it proper for Brown, Schultz to take into
8 account its experience with CCI Construction?

9 A Yes.

10 Q Why does profit fade mean estimates for the cost
11 to complete were wrong or inaccurately reported?

12 A The profit fade analysis is the review of
13 completed contracts compared to the work in process of a
14 previous year, and as part of an audit procedure, you
15 review the profit fade analysis to determine the
16 reliability of management's ability to estimate cost to
17 complete on a particular contract.

18 Q Can't you have profit fade even if the estimated
19 cost to complete is accurately reported?

20 A Yes.

21 Q So it's not necessarily the case that profit
22 fade indicates that estimated cost to complete was
23 unreliably reported by management, is that right?

24 A That's correct. In most audits, you need to

1 look at a lot of different information.

2 Q Do you agree, sir, that estimating is an
3 integral part of a contractor's business activities and
4 there is a necessity to revise estimates on contracts
5 continually as the work progresses. The fact that
6 circumstances may necessitate frequent revision of
7 estimates does not indicate that the estimates are
8 unreliable for the purpose for which they are used,
9 although results may differ widely from original
10 estimates. Because of the nature of the business, the
11 contractor in the conduct of his business may still find
12 the estimates reasonably dependable. Despite these
13 widely recognized conditions, a contractor's estimates
14 of total contract revenue and total contract costs
15 should be regarded as reasonably dependable if the
16 minimum total revenue and the maximum total cost can be
17 estimated with a sufficient degree of confidence to
18 justify the contractor's bids on contracts.

19 A Could I read that?

20 Q On this occasion I'll let you read it so I don't
21 have to read it back.

22 A Can you just tell me where you started?

23 Q (Pointing.)

24 A Number 27.

1 I'm done reading it.

2 Q Do you agree with that statement?

3 A Yes.

4 Q Do you agree with all of the statements in the
5 Audit Guide for the contracting industry or the
6 construction industry?

7 A Yes.

8 Q Do you agree, business enterprises engaged in
9 contracting, like all business enterprises, are exposed
10 to numerous business risks that vary from contract to
11 contract. The reliability of the estimating process in
12 contract accounting does not depend on the absence of
13 such risks. Assessing business risks is a function of
14 users of financial statements.

15 A Yes.

16 Q Did you form any opinions, sir, about the audit
17 conducted by Brown, Schultz for the year 1997?

18 A Yes.

19 Q Did you form any opinion that -- about whether
20 Brown, Schultz in its audit for CCI for the year 1997
21 acted in conformity with Generally Accepted Auditing
22 Standards?

23 A I did form an opinion.

24 Q Did you form an opinion that Brown, Schultz

1 audit work papers reflected more information for the
2 year 1997 that the opinion for the 1997 financial
3 statements by Brown, Schultz would have been different?

4 MR. MCGLYNN: Objection.

5 A Could you restate the question?

6 MR. McCARRON: Q Do you have any reason to believe
7 that if the audit work papers were more complete for the
8 year 1997 that the Brown, Schultz audit opinion of the
9 1997 financial statements for CCI Construction would
10 have been different?

11 A No.

12 MR. MCGLYNN: Objection.

13 MR. McCARRON: Q Do you have any reason to believe
14 that if greater skepticism had been used by the auditing
15 staff of Brown, Schultz in connection with the 1997
16 audit of the 1997 financial statements for CCI
17 Construction that the opinion by Brown, Schultz of that
18 1997 financial statement would have been different?

19 A No.

20 Q Did you find an indication in the testimony by
21 the auditors which supplemented the information included
22 on the work papers for the 1997 audit?

23 MR. MCGLYNN: Objection.

24 A There was information documented by Bruce Brown

1 intended users of the financial statement, which they
2 identified but failed to adjust their audit for.

3 The second item is what I referred to as the
4 skepticism, not taking management's representations
5 verbatim. It seemed like there is a conversational
6 audit going on between the audit staff and CCI
7 management where they accepted whatever was told to them
8 and didn't go beyond that or did not document that they
9 went beyond that to substantiate any of the evidence or
10 corroborate any of the statements made by management.

11 Q What is it that you believe should have been
12 done to resolve the due professional care issue for the
13 1997 audit?

14 A I think the testing of estimated costs to
15 complete, the testing of job costs, accumulated job
16 costs, both of which are inherent in the percentage
17 completion method of accounting, the additional testing
18 of subcontractors, the inclusion in subsequent
19 disbursements testing for payables of job costs to
20 determine that all of the job costs to date were
21 accumulated, to review subcontractor agreements and all
22 contracts, to document subcontractor buy-outs and
23 changes in subcontractor agreements, and to build a
24 correlation between the estimated gross profit of an

1 individual contract with historical gross profits that
2 were used.

3 Q Have you finished your answer?

4 A Yes.

5 Q And that's the complete list of additional work
6 you believe should have been done in connection with the
7 1997 audit to resolve the due professional care issue
8 you identified, is that right?

9 A Whether it's complete or not, that's part of
10 what I would have done, yes.

11 Q Are you able to tell us what the result -- that
12 the result of the audit would have been different if
13 those additional procedures had been performed as you
14 just listed?

15 A It's my opinion that they would have had a
16 different reporting of the results of operation as I've
17 restated in my report.

18 Q Based on doing these additional procedures, is
19 that right?

20 A We talked about procedures for due professional
21 care and have not talked about the sufficient competent
22 evidential matters.

23 Q I'm asking, sir, if the additional procedures
24 had been performed, as you just listed, to resolve the

1 due professional care issue, are you able to tell us
2 that the results of the audit would have been different
3 and that the opinion for the 1997 financial statements
4 of CCI Construction for 1997 would have been different?

5 A No, I can't tell you.

6 Q Did you go back and do -- let me start over.

7 Did you do all those procedures which you just
8 described should have been done by Brown, Schultz in
9 connection with the 1997 audit concerning due
10 professional care?

11 A Interviews with management, no, I did not.

12 Q All the things that you just told us about,
13 testing for job costs, additional review of
14 subcontractor agreements --

15 A No, I did not.

16 Q -- all the stuff you just gave us a long list
17 about to resolve due professional care, did you perform
18 those procedures, which you contend should have been
19 done by Brown, Schultz, to resolve the issue you raised
20 about due professional care for the 1997 audit?

21 A Those records were not available, no.

22 Q Do you know whether those records were available
23 in order to do that review?

24 A The CCI records --

1 firm should have done for the 1997 audit?

2 A Yes. If they were available, I would have
3 reviewed them.

4 Q Who told you that they were not available -- let
5 me start over.

6 Who told you that the CCI Construction records
7 were not available?

8 A There was, from what I recall, an individual at
9 the USF&G office that communicated that to us prior to
10 my arrival out in Baltimore to review the work and
11 prepare my expert report, and then while I was there, we
12 talked to somebody on the phone that I mentioned that we
13 thought maybe would have access to their old computer
14 files in an attempt to get those and recreate those
15 records.

16 Q Sir, were you ever made aware that those records
17 exist in the hands of the accountants for CCI? Did you
18 know that?

19 A Records exist that detailed records for CCI --

20 Q Did you know CCI went through bankruptcy?

21 A Yes.

22 Q Were you aware there were accountants employed
23 in connection with the bankruptcy?

24 A No, I was not aware.

1 not available.

2 Q Would you still have an interest in reviewing
3 those records if you could gain access to them?

4 A If I could get access to all the records?

5 Q For CCI Construction.

6 A For their detailed records?

7 Q That would be of interest to you?

8 A Yes.

9 MR. McGLYNN: Is this a good time to take a break?
10 Five after 1:00.

11 MR. McCARRON: Let me just finish up with 1997,
12 which relates to this other area he talked about.

13 MR. McGLYNN: What do you estimate?

14 MR. McCARRON: More than a couple minutes.

15 MR. McGLYNN: All right.

16 MR. McCARRON: Q Sir, what is it you contend
17 should have been done by the Brown, Schultz auditors for
18 the 1997 audit in order to satisfy your issue and
19 concern about the insufficiency or sufficiency of
20 competent evidential material?

21 A They should have obtained -- The underlying
22 documentation in your work papers is your basis for the
23 opinion. They did not obtain enough information on
24 estimated costs to complete to review the estimates in

1 accordance with Statement on Auditing Standards No. 57,
2 which is auditing accounting estimates. They took
3 management's representations and have no documentation
4 in the file that they did anything beyond that, besides
5 relying upon, despite the fact that there was numerous
6 indications on the work papers that there were
7 subcontractor default, subcontractor buy-outs, nothing
8 that indicated that they reviewed the subcontractor
9 records or the new subcontractor taking over.

10 In addition, the testing of job costs was merely
11 a test of 25 -- and it was supposedly a haphazard
12 selection of 25 items, which turned out to be 13 payroll
13 and 12 non-payroll items. No vouching of job costs.

14 Thirdly, in their testing of payables and
15 subsequent disbursements, they specifically excluded job
16 cost from their scope of testing and subsequent
17 disbursements.

18 Q Were there any problems with the cost recording
19 system at CCI Construction for job costs?

20 A I don't know.

21 Q Do you know what the result would have been for
22 the 1997 audit if the additional procedures or work had
23 been done correctly as you just described in your list?

24 A Could you ask that again?

1 Q Do you know whether the results for the 1997
2 audit by Brown, Schultz of the 1997 CCI financial
3 statements would have been different if the correct
4 procedures and additional procedures you just listed had
5 been done by Brown, Schultz?

6 A No, I don't.

7 Q The only way you could determine that is if you
8 looked at the CCI records, is that right?

9 A That's correct.

10 Q And, again, you haven't looked at those records
11 from CCI in order to be able to make a determination
12 about whether it would have mattered to the audit
13 opinion of Brown, Schultz if those additional or correct
14 procedures had been performed to resolve the issue you
15 identified concerning sufficient competent evidential
16 material, is that right?

17 A **Correct.**

18 MR. McCARRON: Do you want to break, Mr. McGlynn?

19 MR. McGLYNN: Happy to do so.

20 MR. McCARRON: No, no. I'm offering to you. You're
21 the one who asked.

22 (off the record at 1:08 p.m.)

23 (On the record at 1:49 p.m.)

24 Q Did you put your request for the CCI records in

1 A I wanted to review the records of CCI for
2 subsequent events for what happened subsequent to the
3 end of the year when payments were made, match up their
4 original accounting records with invoices and other
5 documents as considered necessary. It was the best
6 source of information available.

7 Q Didn't you want the CCI records in order to
8 determine the accuracy of the 1997 and 1998 financial
9 statements for CCI?

10 A Yes.

11 Q Do you have an opinion about whether the 1997
12 financial statements are wrong?

13 A Yes.

14 Q Well, the 1997 financial statement for CCI is
15 the financial statement prepared by management, is that
16 true?

17 A I'm sorry. I thought you meant the audit.
18 Audited financial statements?

19 Q The financial statements themselves, that actual
20 financial statement, is a representation of management,
21 is it not?

22 A Yes, issued by Brown, Schultz.

23 Q The financial statement isn't issued by Brown,
24 Schultz, is it? The financial statement itself is not

1 issued by Brown, Schultz, is it?

2 A They performed the audit of the financial
3 statement, which is, yes, a representation of
4 management.

5 Q Just to be clear, the financial statement, the
6 actual financial statement is the representation of
7 management for CCI, is that true?

8 A Yes. It's been verified by Brown, Schultz.

9 Q But the financial statement itself is not a
10 representation by Brown, Schultz, is it?

11 A The financial statement with part of an audit
12 opinion indicates that a certain amount of work has been
13 done by Brown, Schultz on those particular financial
14 statements.

15 Q Sir, that's a separate part, not the financial
16 statement. Aren't you talking about an audit report?

17 A In connection with the financial statement.

18 Q But an audit report --

19 MR. MCGLYNN: Let him finish his answer, Jeff,
20 please.

21 MR. McCARRON: I thought he was finished.

22 A The financial statement includes the audit
23 report, supplementary information, and footnotes.

24 Q There is a thing called a financial statement,

1 which is different than the audit report. Isn't the
2 audit report different than the financial statement?

3 A Yes.

4 MR. MCGLYNN: I'm glad we cleared that up.

5 MR. McCARRON: Sorry. Do you have some commentary
6 you want to interject or what?

7 MR. MCGLYNN: I just made it.

8 MR. McCARRON: Apparently you don't realize that,
9 because if you did realize that, there wouldn't be this
10 whole case.

11 MR. MCGLYNN: I prefer to do my arguing in court,
12 Jeff.

13 MR. McCARRON: You'll get your chance, maybe.

14 MR. MCGLYNN: Definitely.

15 MR. McCARRON: Q In what respect is the 1997
16 financial statement of CCI Construction wrong?

17 A It was not done in accordance with GAAS, as I
18 had previously indicated and we had gone through.

19 Q Are there any amounts reflected on the 1997 CCI
20 financial statement which are wrong?

21 A The amounts that I have shown in my restatement.

22 Q Are you talking about adjustments you made?

23 A The adjustments I made in connection with my
24 restatement of the 1997 financial statements as a result

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1 A There is a date on the schedule of 2/12/2000,
2 4:37 p.m.

3 Q Do you have any reason to believe that the work
4 in progress schedule for 1999 existed any time before
5 February 2000?

6 A No.

7 Q Do you have any reason to believe that the work
8 in progress schedule for 1999 existed when Brown,
9 Schultz did an audit for 1997?

10 A No.

11 Q Working backwards again, the completed audit --
12 let me start over.

13 The completed contracts schedule for 1998 was
14 generated sometime during 1999, is that right?

15 A That I do not know. I do not know when the
16 completed contracts -- I assume it would have been
17 completed as the contracts were completed.

18 Q But the completed -- let's be clear.

19 You refer to and you relied on completed
20 contracts schedule for 1998, is that right?

21 A Correct.

22 Q So that schedule reflects contracts which were
23 completed during 1998, is that right?

24 A That's correct.

1 Q That schedule of completed contracts for 1998
2 would not have been available any earlier than the end
3 of 1998, is that right?

4 A Correct.

5 Q So that the completed contracts schedule for
6 1998 was not in existence when Brown Schultz did its
7 audit for 1997, is that right?

8 A Not the schedule that I referred to in the
9 financial statements.

10 Q Now, you're not able to determine -- you did not
11 base your proposed adjustments for the 1997 financial
12 statement on the schedule of contracts in progress for
13 1997, is that true?

14 A I use that as my starting point for the
15 restatement.

16 Q But you need the additional information provided
17 by the completed contracts schedule and the work in
18 progress schedule from 1998 and 1999 to make your
19 determination that adjustments were warranted for the
20 1997 financial statement?

21 A Correct.

22 Q Do you have any reason to believe that the
23 information, which was reflected on the completed
24 contracts for 1998 schedule, was known to or available

1 to Brown, Schultz when it performed its audit during --
2 for the period 1997?

3 A I don't know when it became available to Brown,
4 Schultz.

5 Q Wouldn't it be important to you to know?

6 A Yes.

7 Q Do you have any reason to think that the
8 information reflected on the work in progress schedule
9 for 1999 was available -- that that information was
10 available or known to Brown, Schultz when it did its
11 audit for the period ending 1997?

12 A It's my opinion had they done the additional
13 audit procedures that I enumerated previously that some
14 of the information would have been available to them
15 with regards to estimated costs to complete that were
16 inherent in the construction in progress schedule that
17 we're referring to at December 31, 1997.

18 Q What specific information would have been
19 available and learned by Brown, Schultz, which is --

20 A Contract --

21 Q -- which is reflected on the work in progress
22 schedule for 1999, which they would have learned if they
23 had done additional audit procedures during the period
24 ending 1997?

1 Q And for each of the calculations, adjustments
2 you proposed were based on information about the
3 amount -- the actual amount of the cost to complete the
4 contract, is that right?

5 A Correct. Total estimated cost and estimated
6 cost to complete.

7 Q Didn't you use the actual cost to complete the
8 contract from which to derive your determinations about
9 proposed adjustments to the 1997 and the 1998 financial
10 statement?

11 A That is correct. In 1997 and 1998 I used the
12 best available information from the 1999 work in process
13 schedule that I referred to earlier.

14 Q That was a work in process schedule which was
15 generated by CCI management?

16 A I don't know who generated the work paper.

17 Q It wasn't from Brown, Schultz, was it?

18 A I don't know who generated this work paper. The
19 note on it said picked up at USF&G offices.

20 Q In 2000, you're not aware -- let me start over.

21 You're not aware that Brown, Schultz had any
22 involvement with CCI during 2000, are you?

23 A I'm not aware of any.

24 Q In order -- let's stay with 1997, sir. All the

1 proposed adjustments you made were based on actual cost
2 for the contract?

3 A That's correct.

4 Q Did you perform any investigation or analysis to
5 determine -- let me start over.

6 The actual cost to complete the contract was not
7 known until the contracts were actually completed, is
8 that right?

9 A Yes.

10 Q And for a contract which was not completed
11 during 1997 or had not been completed prior to the audit
12 work, the actual cost to complete that -- those
13 contracts would not be known to the auditors during the
14 audit work period, is that right?

15 A That is correct.

16 Q So in deriving or determining the proposed
17 adjustments for the 1997 financial statement, you used
18 information about the actual cost to complete the
19 contracts, which had not been completed during 1997,
20 which was not available to Brown, Schultz during its
21 audit work?

22 A The completed contract schedule that I used was
23 not available to them, no.

24 Q Nor was the information included on the

1 completed contract schedule available to Brown, Schultz
2 when it performed its audit work?

3 A I disagree. I think some of the costs would
4 have been available had they done the additional work
5 that was required under Generally Accepted Auditing
6 Standards, and that's to do more than accept
7 management's representation as to what the gross profit
8 on the job was going to turn out to be.

9 Q Are you telling us that there were actual
10 completed contract costs for contracts which had not
11 been completed during 1997 which were available to
12 Brown, Schultz during its audit work?

13 A As I indicated, I think information was
14 available.

15 Q Sir, you're not answering the question.

16 MR. MCGLYNN: Objection.

17 MR. McCARRON: Q Was there -- let me start over.

18 was the information about completed -- let me
19 start over.

20 was the information concerning the actual cost
21 to complete contracts, which had not been completed by
22 the end of 1997, available to Brown, Schultz when it
23 performed its audit work for the period ending 1997?

24 A I don't know because I do not know when the

1 contracts were completed, the exact dates.

2 Q Did you perform any investigation to determine
3 the events which triggered or caused the increased
4 contract cost?

5 A Could you read that back?

6 (Record read.)

7 THE WITNESS: No.

8 Q Did you do any investigation or determine the
9 date on which the events occurred, which triggered or
10 caused the additional cost to complete the contract over
11 and above the estimated cost to complete?

12 A Not outside of reviewing the Brown, Schultz work
13 papers.

14 Q Were you able to determine the date on which the
15 event or occurrence -- let me start over.

16 Were you able to determine the date or
17 approximate date the event which caused the increased
18 cost over the estimated cost to complete occurred?

19 A Could you read that back?

20 (Record read.)

21 THE WITNESS: No. Those records would have been
22 available through the CCI documents.

23 Q So if you had -- let me start over.

24 You would need the CCI documents in order to

1 specific source of the increased costs for Job 426?

2 A we did not have it available.

3 MR. McGLYNN: Objection.

4 MR. McCARRON: Q Will you answer? Does it mean
5 you did not determine the specific costs for the
6 specific -- let me start again.

7 Did you determine the specific source for the
8 increased costs experienced on Job 426?

9 A Absent the records, no, we didn't.

10 Q That information would be available in the CCI
11 records?

12 A That information should be available in the CCI
13 records. I can't speculate what is in the CCI records.

14 Q Was there any job for which you proposed an
15 adjustment for the -- where you determined the specific
16 source of increased cost?

17 A As I indicated previously, we did not have a
18 breakdown of costs by source and use total estimated
19 cost by contract.

20 Q Does that mean yes, you never determined the
21 specific source of increased costs for any job for which
22 you proposed an adjustment?

23 A I determined it on a total contract -- total
24 estimated cost per contract basis.

1 Q You did not determine the specific source of
2 increased costs for any job for which you proposed an
3 adjustment to estimated cost to complete?

4 A No. It was not available.

5 Q Sir, when you say the information is not
6 available, you mean that since -- you did not get it
7 because you did not get access to the CCI documents, is
8 that it?

9 A The access to the CCI documents -- what I relied
10 upon from CCI is what's included in my file and what I
11 referred to.

12 Q You don't -- All you're saying about the -- that
13 you did not have access to the information means you
14 didn't get the records which would give you the
15 information about the specific source of increased
16 costs, is that right?

17 A That's right. It was not available.

18 Q When you say it's not available, you mean you
19 just haven't gained access to the information, right?

20 A We were told it was not available.

21 Q Who specifically told you that the CCI materials
22 or whatever records you needed to determine the source
23 and the date for the increased cost for the jobs for
24 which you proposed adjustments to the financial

1 statements --

2 A There --

3 Q -- related to increased -- I'm sorry, the
4 estimated cost to complete?

5 A Could you read that question back?

6 Q who specifically told you that the records which
7 you needed to determine the source and the date of the
8 increased cost for those jobs for which you proposed
9 adjustments to the estimated costs to complete did not
10 exist?

11 A The specific person would have been an
12 individual from our Baltimore office who did the initial
13 work on the engagement and discussed with USF&G and
14 Mr. McGlynn's firm over what records were available,
15 that it looked at what records were available, and
16 compiled the necessary records that were left available
17 from CCI. On the other hand, the source of the total
18 cost I wouldn't have looked at necessarily anyway in my
19 computation of total estimated cost.

20 Q You wanted -- You would want to look at the
21 source of the increased cost --

22 A Total cost, absolutely.

23 Q -- to determine the nature of the source for the
24 increased cost for each job?

1 A Right.

2 Q Along with the date on which the increased cost
3 occurred for each of those items, is that right?

4 A Correct.

5 Q And that would be to verify and confirm that
6 your proposed adjustments were warranted?

7 A You would need to take it beyond that. When the
8 costs were incurred and when they were available are two
9 different things. I would have used it to substantiate
10 when the actual costs were incurred subsequent to the
11 end of the year.

12 Q Who is it that told you that CCI or other
13 records from which you could have derived the increased
14 cost information were not available?

15 A It would have been George Sonnefeld.

16 Q And do you know the source of Mr. Sonnefeld's
17 information that the records were not available?

18 A Inquiry with a representative from USF&G and
19 Mr. McGlynn's office.

20 Q Do you know who specifically Mr. Sonnefeld had
21 contact with to obtain the CCI records or other records
22 relating to the source of increased costs?

23 A I'm not sure of specific names, no.

24 Q You're not able to -- let me start over.

1 information was available.

2 Q But without regard for when the information was
3 available, you're not able to tell us how much different
4 the accumulated job costs would have been if the
5 additional procedures had been employed?

6 A No.

7 Q For any period, is that right?

8 A Fortunately the timing of when that information
9 is available is pretty critical.

10 Q But let's answer the first question. You're not
11 able --

12 MR. MCGLYNN: Objection.

13 MR. McCARRON: Q -- to tell us the amount by which
14 the accumulated job costs would have been different if
15 additional auditing procedures -- different procedures
16 had been performed by Brown, Schultz --

17 A No.

18 Q -- for either the 1997 or 1998 period, is that
19 right?

20 A That's correct.

21 Q Now, the timing of those additional accumulated
22 costs, it was important to know whether it was
23 information available to the auditors at the time they
24 performed their audit, is that right?

1 A That's correct.

2 Q You needed -- You would need that information in
3 order to assess whether the auditors would have had
4 different results if they had performed additional or
5 different audit procedures during their work, is that
6 right?

7 A That would have been one of the steps, as I
8 indicated.

9 Q So that if the information concerning additional
10 accumulated job costs did not become available until
11 after the audit period, then that would not be
12 information which would have been learned by the
13 auditors during their audit work, is that right?

14 A That would have prompted them to not conclude
15 their audit work until that information was available.

16 Q But, sir, if the information did not become
17 available in the sense that the accumulated --
18 additional accumulated costs did not occur until after
19 the audit work was completed, then that would be
20 information that would not be available to the auditors
21 during their audit work, is that right?

22 A Okay. Maybe I'm misunderstanding your question.
23 The accumulation of cost includes those both incurred to
24 date and those that are going to be incurred. Job cost

1 detail.

2 Q Do you believe that job costs reflected in the
3 financial statements for 1997 for CCI Construction as of
4 December 31, 1997, are wrong?

5 A No.

6 Q Do you believe the job costs reflected on the
7 1998 financial statement of CCI Construction as of
8 December 31, 1998, are wrong?

9 A I'm unable to make that determination based on
10 before there was not enough work done, enough audit
11 procedures performed in connection with the accumulated
12 costs to date. They relied upon 25 job costs.

13 Q So the answer is you have no reason to believe
14 that the job costs for 1998, as of December 31, 1998, as
15 reflected on the 1998 financial statement is wrong?

16 A I cannot opine on the job costs as presented on
17 the financial statements.

18 Q But can we confirm you don't have any reason to
19 believe that the job costs reflected on the 1998
20 financial statement for the period ending December 31,
21 1998, are wrong?

22 A I indicated why I felt they were wrong. There
23 wasn't enough work done. Their work was limited to a
24 selection of 25 random job costs. If that's the work

1 MR. McCARRON: Q I'm asking, though, do you know
2 of information which leads you to believe that the 1998
3 job costs are actually incorrectly reflected on the 1998
4 financial statement?

5 MR. McGLYNN: Objection.

6 A I know subsequent to the end of the year there
7 were significant losses incurred on jobs in progress in
8 1998, jobs that they did very little work for or
9 obtained very little audit evidence for to substantiate
10 the work in process at 12/31/98.

11 MR. McCARRON: Q Do you know whether -- Do you
12 have any reason to know of any information which leads
13 you to believe the job costs for 1998 are wrong on the
14 1998 financial statement?

15 A The information I referred to were subsequent
16 schedules prepared by CCI management, total estimated
17 cost.

18 Q Sir, estimated cost is not a job cost at the
19 time, is it?

20 A It could be. It's either going to be an
21 accumulated job cost or estimated cost to complete.

22 Q Sir, do you have any reason to believe that the
23 actual job costs actually incurred during 1998 is
24 inaccurately or incorrectly reflected on the financial

1 statement?

2 MR. MCGLYNN: Objection.

3 A I don't have a reason to believe that it was or
4 was not.

5 MR. McCARRON: Q Do you have any reason to believe
6 that additional audit procedures by Brown, Schultz in
7 connection with the work they performed for the 1998
8 audit on the financial statement of CCI Construction
9 would have led to a different result?

10 A Yes.

11 Q To what extent would additional procedures have
12 led to a different result performed in the audit by
13 Brown, Schultz for the 1998 time period?

14 A As I had described previously, their testing of
15 accumulated job costs relied upon a random sample of 25
16 job costs. In 1998, they relied upon estimated costs to
17 complete as represented by management for gross profits
18 on two individual jobs that they had never historically
19 met. They unduly accepted management's representation.
20 There is no documentation in the file that anything was
21 done to corroborate that information that management
22 represented were the estimated costs to complete.

23 In addition, also in 1998 they specifically
24 excluded from their job costs testing the job -- I'm

1 it the same as your criticism of the audit by Brown,
2 Schultz for 1997 in those respects?

3 A Yes, it is.

4 Q What is your criticism -- let me start over.

5 In what respect concerning PCIC did Brown,
6 Schultz not act in conformity with Generally Accepted
7 Auditing Standards?

8 A In the recording of the guaranty as are evident
9 by PCIC.

10 Q what was it about the recording of the guaranty
11 by PCIC which was not in accordance with Generally
12 Accepted Auditing Standards?

13 A It was not proper. There is no basis for it.

14 Q what was not proper?

15 A The recording of the guaranty as revenue.

16 Q So the recording or including in revenue the
17 amount of the guaranty by PCIC for the Mahanoy Prison
18 claim was not proper?

19 A That's correct.

20 Q Why was it not proper to include in revenue --
21 is that what you mean by recording, including in
22 revenue?

23 A Correct.

24 Q Why was it not proper to include in revenue the

1 certain results desired by the related parties, the
2 resulting accounting measures may not represent what
3 they usually would be expected to represent.

4 Q So what specific GAAP procedure was violated by
5 including the PCIC guaranty amount in revenue for the
6 1998 financial statement?

7 A There is no basis for recording it as revenue.
8 How does it relate to revenue? It wasn't done in the
9 ordinary course of business. It was merely a guaranty
10 by a related party that --

11 Q What?

12 A -- I'll pay it if the customer doesn't.

13 Q Isn't it guaranteed income, sir?

14 A No.

15 Q Why is it not guaranteed income?

16 A A guaranty did not relate to that claim.

17 Q Are you telling me that the guaranty was no
18 good?

19 A The guaranty was just that. It was a guaranty
20 by a related party that I will deposit the difference
21 between what you collect on a claim and the difference
22 I'll put in, but it doesn't get recognized as revenue.

23 Q Was the guaranty valid?

24 A I assume that it was, yes. I reviewed the

1 guaranty.

2 Q Was the guaranty made up?

3 MR. MCGLYNN: Objection.

4 A I don't know.

5 MR. MCCARRON: Q Was it a contrived guaranty?

6 A I don't know.

7 Q Was there an insurance policy issued by PCIC to
8 CCI Construction?

9 A Yes.

10 Q Did the insurance policy cover the Mahanoy
11 Prison job?

12 A Yes.

13 Q Was the claim for which the PCIC guaranty was
14 provided for the claim by CCI arising out of the Mahanoy
15 Prison Project?

16 A The claim --

17 MR. MCGLYNN: Objection.

18 THE WITNESS: The claim was related to the Mahanoy
19 Prison job.

20 MR. MCCARRON: Q So there existed an insurance
21 policy issued by PCIC for which conceivably may cover or
22 could have covered the claim by CCI for the Mahanoy
23 Prison Project, is that right?

24 MR. MCGLYNN: Objection.

1 A The claim --

2 MR. McCARRON: Q Is that right?

3 A -- had to do for extended costs that in my
4 opinion are not remedial costs, which was the insurance
5 policy that was issued by PCIC, in addition, what was
6 disclosed in PCIC's financial statements.

7 Q So is your problem with including the PCIC
8 guaranty in revenue your determination or belief that
9 the PCIC insurance policy did not cover the Mahanoy
10 Prison claim?

11 A I have two problems with the recording of it.

12 Q Is it true that one of the issues you have with
13 the PCIC guaranty being reflected in revenue is that
14 it's your opinion the PCIC insurance policy did not
15 cover the CCI claim concerning the Mahanoy Prison
16 Project?

17 A That's correct.

18 Q So that if you're wrong about the interpretation
19 of the insurance policy and it did provide coverage for
20 the claim by CCI concerning the Mahanoy Prison Project,
21 then the concern of yours, including the PCIC guaranty,
22 would be eliminated?

23 A No, it would not be eliminated. The PCIC
24 guaranty -- as I said, I had two problems with it -- is

1 a separate issue.

2 Q But at least one of your two concerns would be
3 eliminated.

4 MR. McGLYNN: Have you finished your answer?

5 THE WITNESS: No, I haven't.

6 MR. McCARRON: Q Isn't it the situation -- if I
7 could --

8 MR. McGLYNN: He hasn't finished his answer. Maybe
9 he'll answer this concern when he finishes the answer.
10 Go ahead, please.

11 A The issue with the claim, and as I opined on
12 earlier, in my opinion was not covered under a remedial
13 insurance contract issued by PCIC.

14 The second issue related to the guaranty by the
15 stockholder, if you will -- the stockholder of PCIC
16 happened to be the stockholder of CCI -- was a
17 contingent gain. If the -- If you do not collect from
18 the Commonwealth of Pennsylvania or from the owner, I'll
19 pay the difference. Simply that, a guaranty that if
20 something doesn't happen in the future, I will do
21 something.

22 MR. McCARRON: Q what is it about that that
23 violates GAAP?

24 A As I just read in FAS 57.

1 stockholder owned one hundred percent of and in his own
2 deposition said I determined what gets paid and what
3 doesn't get paid.

4 Q Was the PCIC guaranty a guaranty by a
5 stockholder of CCI?

6 A It was a guaranty by a company under common
7 control.

8 Q Was the PCIC guaranty a guaranty by a
9 stockholder of CCI?

10 A No.

11 Q Sir, in paragraph 15, does it not indicate that
12 you could include in revenue the amount of the related
13 party transaction if there is disclosure?

14 MR. McGLYNN: Objection as to the form.

15 A Where are you referring to that?

16 MR. McCARRON: Q I'm asking, sir, doesn't it
17 reflect the concept in paragraph 15 of FAS 57 that if a
18 related party transaction is disclosed, then it can be
19 included in revenue?

20 A No.

21 Q You don't understand that that's what that
22 means?

23 A No, I don't read that out of there.

24 Q Let me ask you, does -- are you familiar with

1 the treatment of insurance claims under Generally
2 Accepted Accounting Principles?

3 A I do not audit any insurance companies, no.

4 Q Are you aware of the treatment of insurance
5 claims which a client may have?

6 A I've had cases where clients have had claims
7 against insurance companies, yes.

8 Q And are you aware that if the -- that there are
9 instances -- let me start over.

10 Are there instances in which insurance claims --
11 the amount of insurance claims can be properly included
12 in revenue under accrual accounting methods?

13 A If there is a legal basis --

14 Q Is that a yes?

15 A Can I finish my response?

16 Q It either is or it isn't.

17 A Yes, if there's a legal basis for the claim,
18 which there wasn't in this case.

19 Q And you've decided that there was not a legal
20 basis for the claim -- let me start over.

21 Did you consult an attorney about whether there
22 was a legal basis for the PCIC claim?

23 A I did not.

24 Q So you, independent of an attorney, decided

1 there was not a legal basis for the PCIC claim by CCI
2 Construction, is that true? Is that true?

3 A Ask it again.

4 Q You determined, independent of a lawyer, that
5 the PCIC claim against the PCIC policy -- let me start
6 again.

7 You determined without consulting an attorney
8 that the CCI claim against the PCIC policy was not a
9 covered claim and there was no legal obligation for PCIC
10 to pay it, is that right?

11 A I did that on my own based on the remedial work.

12 Q Did you have law training?

13 A No.

14 Q Are you an attorney?

15 A No.

16 Q Are you qualified to interpret the provisions of
17 an insurance policy?

18 A From my understanding of reading it, I felt
19 qualified that I can make a judgment as to whether a
20 claim for delayed work fell under a remedial work claim
21 as disclosed in the PCIC financial statement.

22 Q Do you have any reason to believe that Bruce
23 Brown or the other folks at Brown, Schultz were less
24 qualified than you to determine whether the PCIC policy

1 covered the CCI claim arising out of the Mahanoy Prison
2 Project?

3 A I don't know what their qualifications were, no.

4 Q You have no reason to believe that you're more
5 qualified than Bruce Brown to make a judgment about the
6 application of an insurance policy, do you?

7 A That's correct, from an insurance policy claim.

8 Q Would it be a violation of Generally Accepted
9 Accounting Principles for an accountant to make a
10 reasonable professional judgment about whether an
11 insurance policy covered a claim but happened to be
12 wrong?

13 A If we're now talking about the 1,162,000 claim
14 and whether that is going to fall under recognition
15 standards, guaranteed aside --

16 Q Why don't we stick with my question.

17 A Can I finish my question?

18 Q See, you're not allowed to ask questions.
19 That's part of the problem.

20 MR. MCGLYNN: Do you want to finish your answer?
21 Finish your answer.

22 MR. MCCARRON: He's not giving me an answer. He's
23 giving me a speech.

24 MR. MCGLYNN: Do you want to take another two-minute

1 A FAS 57 for one.

2 Q Anything else?

3 A APB No. 4, which deals with conservatism. FAS
4 No. 5, gain contingencies.

5 Q Any doubt in your mind that the information
6 presented to -- available to Brown, Schultz when it
7 performed its audit work concerning the 1998 period that
8 the amount would be paid by PCIC to CCI Construction?

9 MR. MCGLYNN: Objection.

10 A There is nothing in the work paper that I
11 reviewed that indicated they had reviewed whether that
12 claim was paid.

13 MR. McCARRON: Q Sir, revenue doesn't depend on
14 whether it was actually paid during the period of the
15 financial statements, does it?

16 A Or subsequent review.

17 Q Sir, to recognize revenue for accrual
18 accounting, it is not necessary that the revenue
19 actually be received by the company during the period
20 under -- for which the financial statement is issued,
21 isn't that right?

22 A I agree.

23 Q So it was not important to your consideration
24 about whether or not to include the PCIC guaranty in

1 revenue about whether the revenue was received or the
2 PCIC claim was paid prior to December 31, 1998, is that
3 right?

4 A No, I disagree. You need to look -- If you're
5 going to -- and, number one, the guaranty never should
6 have been recorded as revenue. There is going to be a
7 collectibility issue on whether PCIC had the ability to
8 make that guaranty good.

9 Q Have you learned any information which leads you
10 to believe the guaranty by PCIC was not valid?

11 A At this point in time I know that the guaranty
12 was paid in June and October of 1999.

13 Q So is there any reason -- do you have any
14 information which leads you to believe that as of the
15 audit work by Brown, Schultz for the period 1998 that
16 there was reason to doubt the collectibility of the PCIC
17 guaranty?

18 A Only by reference to the PCIC qualified report
19 on the audited financial statements of PCIC.

20 Q So you have reason to doubt about whether the
21 PCIC guaranty was collectible as of the period of time
22 when Brown, Schultz was performing its audit work?

23 A As of the field work date, yes.

24 Q What information do you base your belief that

1 Q Now, in arriving at your adjustments to the
2 estimated costs to complete for 1997 and 1998 to the
3 financial statements, you used a method called the look
4 back method, is that right?

5 A A method similar to the look back method.

6 Q How does the method you used in deriving the
7 adjustments you proposed in the 1997 and 1998 financial
8 statements differ from the look back method?

9 A The look back method is a method predominantly
10 used by the IRS in calculating the difference between
11 construction in progress at a given date and the final
12 completion date. They compute an interest portion on
13 that, and it's related to that.

14 I used a method what I call similar to look back
15 method where I looked at the best information available,
16 the best cost to complete information available, and
17 applied that to what should have been as of a given
18 date.

19 Now, as we go through the individual contracts,
20 you'll see that on several contracts I varied from that,
21 and I varied from it, as I documented on the work
22 papers, because the job had just started and Brown,
23 Schultz would not have known -- may not have known all
24 the available information.

1 method is used -- reflected in the tax regulations, is
2 that right?

3 A Not necessarily. I didn't dream up the idea of
4 doing this and consulted with people that -- if I was
5 going to restate --

6 Q I think you're misunderstanding.

7 MR. MCGLYNN: Have you finished your answer?

8 MR. McCARRON: Q Isn't it the situation that tax
9 regulations provide and discuss the look back method as
10 a process used in connection with tax related issues?

11 A Under the strict terms of look back, yes.

12 Q Are you aware of any audit principle -- sorry,
13 audit -- accounting principle, audit standard, or
14 statement of pronouncement concerning accountants and
15 auditors, which provides for either the look back method
16 or some modified version of the look back method you
17 employed in arriving at your adjustments for the 1997
18 and 1998 audit statements?

19 A I believe it's applicable in the restatement of
20 the financial statements from the best available
21 information that's known, subsequent events.

22 Q Does GAAP, GAAS, or any accounting pronouncement
23 provide for the use of the look back method or a similar
24 method?

1 MR. McGLYNN: Objection. Asked and answered.

2 A As I indicated, it could. If you were restating
3 the financial statements for correction of an error,
4 it's not precluded from being used.

5 MR. McCARRON: Q Is there an audit -- I'm sorry.

6 Is there an accounting principle or an audit
7 standard or pronouncement of accounting or auditing
8 principles or standards on which you relied to support
9 your idea that the look back method or the modified
10 version of the look back method you used is appropriate?

11 A That would be combining everything I said
12 earlier with respect to use the best available
13 information that I have, absent of records to review and
14 absence of the audit procedures done not in accordance
15 with GAAS, everything else considered in connection with
16 review of Brown, Schultz's work papers, I felt this was
17 the best method available to me to restate the financial
18 statements for 1998 and 1997.

19 Q Are you aware of any instance in which the look
20 back method is used other than in connection with
21 tax-related issues?

22 A Under the term look back, no.

23 Q Where in the accounting literature is there
24 support for the use of the look back method or the

1 modified version of the look back method you used to
2 derive your proposed adjustments for the 1997 and 1998
3 financial statements?

4 A Not specifically.

5 Q Could an accountant performing an audit use the
6 look back method under GAAS in expressing an opinion
7 about the financial statements?

8 A If it was in connection with the correction of
9 an error and he was restating the financial statements,
10 yes.

11 Q Could an accountant use the look back method in
12 performing an audit to express an opinion about
13 financial statements in accordance with GAAS?

14 A I just answered that.

15 Q No, you didn't.

16 A I did.

17 Q No, you didn't. You told me --

18 MR. MCGLYNN: Let's not argue. Go on to the next
19 question.

20 MR. McCARRON: No, I'm not going on to the next
21 question. The next question is going to be exactly the
22 same.

23 MR. MCGLYNN: Then he's going to stand --

24 MR. McCARRON: Do you want to argue with me, is that

1 acting in accordance with GAAS in performing an audit
2 using the look back method?

3 A As I indicated previously, it would be a method
4 that he may consider in the restatement of financial
5 statements in connection with his engagement if -- and
6 maybe an example would help explain it. If you were
7 restating a financial statement and there is an error
8 because of misuse of information in connection with a
9 prior year, you would restate the financial information.

10 Q Did Brown, Schultz restate financial statements,
11 sir?

12 A Did they restate financial statements?

13 Q Yes.

14 A No.

15 Q Weren't you testing the work done by Brown,
16 Schultz?

17 A I was testing their audit work.

18 Q Wouldn't you be required to use the same
19 procedures that -- which Brown, Schultz should use in
20 determining its audit?

21 A I determined their procedures weren't adequate.

22 Q Sir, I didn't ask you that. Wouldn't you be
23 required in testing the quality of the work by Brown,
24 Schultz to use the same procedures which applied or

1 should have been used by Brown, Schultz in performing
2 their audit?

3 A Yes.

4 Q Is the look back method a method which Brown,
5 Schultz could properly have used in conducting their
6 audit during 1997 and 1998?

7 A In connection with review of completed
8 contracts, yes, they did.

9 Q In performing the audit of the 1997 and 1998
10 financial statements for CCI, would Brown, Schultz have
11 acted in accordance with Generally Accepted Auditing
12 Standards to have used the look back method?

13 A A method similar to the look back by reviewing
14 completed contracts, which is documented in their work
15 papers that they did.

16 Q Would Brown, Schultz have been justified in its
17 audit procedures in using the look back method in its
18 audit of estimated costs to complete contracts?

19 A Yes. They would have reviewed, which they did.
20 They reviewed two completed contracts during the year,
21 which in effect is using a method similar to what I used
22 based on our work in process in prior years, how did
23 these contracts actually finish up. For instance, in
24 1998 they looked at the 1997 -- two work in process jobs

1 contracts?

2 MR. MCGLYNN: Objection. Asked and answered.

3 A In connection with their review of completed
4 contracts.

5 MR. McCARRON: Q Was there -- Did you use the look
6 back method in determining the adjustments you proposed
7 for the 1997 and 1998 financial statements for anything
8 other than completed contracts?

9 A For contracts in progress.

10 Q You used it for contracts in progress?

11 A For contracts in progress.

12 Q And the adjustments you proposed relate to
13 contracts in progress?

14 A Correct.

15 Q Did Brown, Schultz use the look back method in
16 their audit procedures for contracts in progress?

17 A They used it in connection with review of the
18 completed contracts in developing and relying upon
19 management's estimates which then figure into the
20 construction in progress schedule.

21 Q But for actually -- In connection with the audit
22 work done by Brown, Schultz specifically with respect to
23 the estimated cost to complete, did it not use the look
24 back method because the data was not yet available,

1 isn't that the case?

2 A Correct.

3 Q Did you limit your restatement process using the
4 look back method and the modified look back method to
5 data which was -- which you know was actually available
6 to the auditors when it conducted the 19 -- the audit of
7 the 1997 and 1998 financial statements?

8 A I don't know what audit information was
9 available to the auditors. As I've explained
10 previously, they didn't extend their audit procedures
11 necessary, that they could have acquired any additional
12 information. There was obviously problems with the
13 estimated cost to complete.

14 Q You, therefore, may have relied on and used
15 data, which was not available to the auditors, when they
16 performed their audits of the 1997 and 1998 financial
17 statements, is that true?

18 A That's true.

19 MR. McCARRON: And -- let me get to my other stuff.

20 Peter, I'm going to work from this packet here.
21 I'm not necessarily going to mark them all at once.

22 Throw a tag on that.

23 (Document marked Exhibit No. 38.)

24 Q Sir, I placed in front of you a document we've

1 have been an adjustment. Had they allocated indirect
2 costs to specific contracts, the total estimated cost
3 and total -- and estimated cost to complete would have
4 been different.

5 Q Would the amount of the adjustment have been
6 material?

7 A I did not do that calculation.

8 Q So you don't know -- you can't tell us that it
9 would have been material if the indirect costs had been
10 treated differently, is that right?

11 A That's correct.

12 Q Would the nonallocation of indirect costs be a
13 basis on which an auditor can withhold an opinion?

14 A If it was material?

15 Q I'm asking, sir. If the -- If management --

16 MR. McGLYNN: He answered your question.

17 MR. McCARRON: Q If management did not reflect on
18 their financial statements -- it would not reflect on
19 their financial statements cost to complete, which
20 included indirect costs, would that be enough to
21 withhold your opinion or to qualify your opinion as an
22 auditor?

23 A If in my opinion the effect of not including
24 indirect costs to jobs in progress was a material

1 amount, yes, it would change my opinion.

2 Q But if the amount was not material; that is --
3 let me start over.

4 If the amount of the nonincluded indirect cost
5 was not material, then that would not be a basis on
6 which to withhold your opinion and to qualify your
7 opinion as an auditor, is that right?

8 A Just on that given item, no.

9 Q Do you know whether Bruce Brown calculated the
10 effect of the nonallocation of indirect costs?

11 A There was a calculation done on two jobs from
12 what I recall each year based on a very simple review of
13 indirect cost.

14 Q The fact that indirect costs were not allocated
15 was disclosed on the financial statements?

16 A Yes, it was.

17 Q And that disclosure was adequate?

18 A Yes.

19 Q Is it your opinion that a partner has to sign
20 every piece of work paper in the audit file?

21 A No.

22 Q In the last page of Exhibit 41, which is also
23 numbered DeBruyn 609, can you read to us what you wrote
24 in the left-hand margin at the very top?

1 with this litigation as an expert witness.

2 Q Did you find any support for your use of the
3 look back method to evaluate the propriety of the work
4 done by auditors?

5 A Yes, I did. I had determined that the look back
6 method was reasonable and had been used in damage
7 evaluation cases in connection with litigation support
8 engagements.

9 Q Are you aware of any instance in which the look
10 back method was used to evaluate the propriety of the
11 accounting work done by auditors?

12 A I don't have any specific cases, no.

13 Q Are you aware of any other accountant who has
14 ever used the look back method to evaluate the propriety
15 of work done by auditors in performing audits of
16 financial statements?

17 A I'm aware of individuals in our firm that have
18 used a method similar to what I have employed to
19 determine the effect of an accounting issue.

20 Q Sir, are you aware of any other instance in this
21 case when an accountant has employed the look back
22 method to evaluate the propriety of the work done by
23 auditors in performing audits of financial statements?

24 A No.

1 looked at all the information that was available.

2 Q As of the time that the audit was conducted?

3 A No.

4 Q So you're talking about you looked at
5 information obtained subsequent to the audit, that's
6 what you looked at?

7 MR. MCGLYNN: Let him finish his answer.

8 MR. McCARRON: Q Is that right?

9 A That's correct.

10 Q Did you determine the reason that CCI went
11 bankrupt?

12 A No.

13 Q Did you consider Mr. Ortenzio's explanation for
14 the reasons CCI had financial difficulty and went
15 bankrupt?

16 A I don't recall what it was in the deposition.

17 Q Did you receive a document which reflected an
18 explanation about Mr. Ortenzio about the reason that CCI
19 had financial difficulty?

20 A I received his initial deposition.

21 Q How about a letter from Mr. Ortenzio which
22 explained the reason that CCI went bankrupt, did you see
23 that?

24 A I did not.

1 Q So you just took at face value the financial
2 reporting by CCI in determining your adjustments for the
3 financial statements for 1998?

4 A I didn't take it at face value. I realized
5 USF&G had now been involved in the wrap-up of the
6 engagements, so I felt there was additional reliance
7 that a third party was reviewing the work in process
8 schedule.

9 Q Do you know whether USF&G had assured the
10 correctness of the interim financial statements issued
11 by CCI for 1999?

12 A It came from the USF&G office.

13 Q I'm asking, do you know whether USF&G did
14 anything to assure that the information included on the
15 financial statements from CCI was correct for 1999?

16 A No.

17 Q So you took financial statements from CCI, which
18 you have now determined were inaccurate for 1997 and
19 1998, and you relied on them for making your
20 calculations based on 1999 information, is that true?

21 A That's true.

22 Q Sir, on page 10 of Exhibit 45 you make a
23 handwritten note in the left-hand column. Did you write
24 "ouch"?

1 Brown, Schultz included in the 1997 or 1998 audit report
2 which was false?

3 A which was false? No.

4 Q One second.

5 The work you did would not be characterized as a
6 reaudit?

7 A No, it would not.

8 Q Did the work papers -- never mind.

9 Can you tell us what you consider to be remedial
10 work?

11 A Under the definition in the PCIC significant
12 accounting policies and under my review of the
13 definition of remedial work, it was work that the
14 contractor; in this case, CCI, was obligated to under
15 the original contract, warranty type work that they were
16 called back to do within, I believe, a year period for
17 that contract.

18 Q That would be remedial work?

19 A Yes.

20 Q Including warranty work?

21 A Yes.

22 (Discussion had off the record.)

23 MR. McCARRON: I'm done.

24 (Whereupon the deposition concluded